STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NOS. 2019-224-E, 2019-225-E, 2019-226-E

In re: Filing Requirements for Integrated Resource Plans Under Act 62	)	**Comments of South Carolina Coastal Conservation League, Southern Alliance for Clean Energy, and Upstate Forever**

The South Carolina Coastal Conservation League, Southern Alliance for Clean Energy, and Upstate Forever (together, "Conservation Groups") welcome the opportunity to comment on the filing requirements for Integrated Resource Plans ("IRPs") under the Energy Freedom Act ("EFA"), or Act 62. These comments will address the following: First, Act 62 vests the Commission with the authority—and duty—to implement the EFA by issuing further guidance on IRP filing requirements. In order to avoid the re-litigation of common issues in each utility IRP docket, it is appropriate for the Commission to use a generic docket to solicit recommendations from interested parties and to provide guidance to utilities on the development of their IRPs in accordance with Act 62. If the Commission deems it necessary, the Commission could undertake a rulemaking as authorized under Act 62. Second, these comments will provide a high level summary of those substantive best practices in resource planning that are critical to meet the legislative intent and purpose of Act 62.

A. Commission Authority Under Act 62 and Procedural Recommendations

As an initial matter, contrary to utilities' assertions, while Act 62's IRP provisions set out a framework for IRP requirements, they do not constitute a comprehensive and detailed set of guidelines for utilities in developing their IRPs. Like nearly all statutory delegations of authority, Act 62 constrains the Commission in some regards and allows it discretion in others. Where a statute is plain and unambiguous, an agency is bound by the statutory language, and where a statute is silent or ambiguous with respect to a specific issue, courts give deference to an agency's interpretation of the statute or regulation, provided the interpretation is worthy of deference. A.O. Smith Corp. v. S.C. Dep't of Health & Envtl. Control, 428 S.C. 189, 205 (Ct. App. 2019) (citing Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 32 (2014)).

The fact that the IRP section of Act 62 is nearly 1000 words long—as Duke noted in a recent filing—is not relevant to whether the Commission has any discretion in how it interprets ambiguous statutory language, and here, the legislature did not expressly define several critical terms in the IRP provisions. For example, under §58-37-40(B)(1)(e), utilities are required to include in their IRPs several resource portfolios developed with the purpose of "fairly evaluating" the range of demand-side, supply-side, storage, and other technologies and services to meet the utility's service obligations. S.C. Code §58-37-40(B)(1)(e). Requiring utilities to evaluate resource portfolios under various scenarios is the core purpose of an IRP, and while Act 62 provides a list of factors that must be included in that evaluation, it does not specify a methodology, and the Commission ultimately is vested with the responsibility of determining whether an evaluation has been done "fairly." Several other terms in that same section—such as "low, medium, and high

cases," "cost," "long-term forecast," and "facility retirement"—are not separately defined by the statute, and their meanings, far from plain and unambiguous, are in fact frequently litigated in utility IRP proceedings across the country. The Commission has the authority to implement Act 62 by providing further guidance to the utilities regarding its ambiguous terms.

The EFA also directs the Commission to decide whether to approve, deny, or modify a utility's IRP based on whether it is the "most reasonable and prudent" plan, taking into account seven factors, including "consumer affordability and least cost" and "other foreseeable conditions that the commission determines to be in the public interest." S.C. Code Ann. § 58-37-40(C)(2). This part of Act 62 imposes upon the Commission a duty to ensure that the record in any given IRP proceeding allows it to fulfill its duty to consider those seven factors the statute requires, and also highlights the broad discretion that Act 62 grants the Commission to consider factors it deems important to the public interest. In our comments below, we address several procedural and substantive requirements the Commission should consider in order to ensure each utility's IRP meets those statutory standards and best serves the public interest and South Carolina ratepayers.

As to the process by which the Commission should decide these questions, a generic docket would be an efficient way to allow parties to provide recommendations to the Commission as to the issues and questions that are likely to arise in every utility IRP docket, and for the Commission to set out general guidance for utilities to follow. Such guidance would not fall afoul of the S.C. Administrative Procedure Act, as it need not be determinative or binding as to any of these issues for any given utility. However, Act 62

does authorize the Commission to promulgate regulations to carry out Act 62's IRP provisions, and the Commission could choose to do so if it wishes to impose binding requirements on all utilities subject to those provisions.

In any event, Conservation Groups request that the Commission provide further opportunity for interested parties to provide written comments on the substantive and procedural requirements of Act 62 with regard to IRPs. If the Commission does not hold further proceedings on these issues, at minimum, it should afford parties additional time and opportunity to file written comments so parties may properly address the technical and complex questions raised by IRPs.

B. Filing Requirements for IRPs Under Act 62

1. Stakeholder Input and Transparency

Under Act 62, the Commission is required to open a proceeding to review each utility's IRP and to allow interested parties to intervene. To ensure that interested parties are able to meaningfully review utility IRPs and to potentially narrow the scope of discovery and litigation after filing, Conservation Groups recommend that the Commission establish a clear process requiring utilities to solicit *and respond to* stakeholder input regarding the assumptions and methodology to be used in developing the IRP. Critically, the utility should be required to seek stakeholder feedback at key stages before IRP modeling begins and throughout the IRP development process.

Allowing stakeholders to access and provide feedback to utilities on assumptions and methodologies used in their IRPs before IRP modeling begins serves three purposes. First, a stakeholder process can narrow the issues that ultimately arise in litigation, provided that utilities meaningfully engage with stakeholder input and incorporate it

where possible. Second, a robust stakeholder process better ensures that the resulting IRP benefits from a full complement of perspectives and areas of expertise. And third, in order to properly assess a utility's IRP or develop alternatives, as Act 62 envisions, stakeholders must be able to see material assumptions and inputs, such as technology and fuel cost inputs, from early stages of IRP development and ideally before models are run. After the IRP is completed, it is significantly more challenging for stakeholders to understand and evaluate how the utility reached its final result, and significantly more costly for the utility to correct any deficiencies.

2. Standards and Procedures for Data

The Commission should also set clear protocols for the quality, quantity, and type of data that utilities must include in their IRPs and how that data will be shared with interested stakeholders and intervenors throughout the process. Act 62 contemplates that utilities will incorporate a host of data relating to the cost and availability of different resources, as well as sensitivity analyses related to fuel costs, environmental regulations, and other uncertainties or risks. S.C. Code Ann. § 58-37-40(B)(1). An IRP is only as good as its underlying data, and utilities should be required to use data that is as up to date, comprehensive, and as accurate as possible.

Conservation Groups propose that the Commission require utilities to use a stakeholder process as described above to determine what data and inputs a utility should use in its IRP. Alternatively, we suggest that the Commission require utilities to use best available data (which, for technologies with falling prices like renewables and storage, may be pricing data from responses to requests for proposals); otherwise, utilities should be required to use reputable public data sources such as the National Renewable Energy

Laboratory's Annual Technology Baseline ("NREL ATB") for renewable costs. If a utility uses non-public data sources, the Commission should require the utility to fully disclose that data as part of stakeholder process and in discovery.

As noted above, it is difficult—if not impossible—for interested parties to fully understand and evaluate the results of a utility's IRP if they do not have access to its underlying data, assumptions, and the modeling that converts those data and assumptions into future scenarios. Any lack of transparency in modeling results prevents parties from being able to understand and articulate issues, hampering the Commission's ability to determine which rate, forecast, or plan is most accurate or best for ratepayers.

As such, in all cases, stakeholders should have the ability to provide input to the utility about data sources and assumptions early in the IRP process, and utilities should be required to disclose and seek input from stakeholders on how they are using the data in their evaluations. Prior avoided cost and IRP proceedings have included utility filings in which key modeling parameters have been withheld due to licensing fees that can run in the tens of thousands of dollars for a single proceeding. This Commission should establish an expectation that non-utility parties have access to all inputs, outputs, documentation, and parameters that are necessary to fully vet the scenarios being presented for decision. As with any ratepayer-funded utility investment or expense, ratepayers and regulators deserve and require entire transparency in order to be able to evaluate the prudence and effectiveness of the investment.

3. Evaluation of Resource Options Under § 58-37-40(B)(1)(e)

The purpose of an IRP is to determine what quantities of particular resources should be deployed over time to meet forecasted load. To this end, Act 62 requires an

IRP to include "several resource portfolios developed with the purpose of fairly evaluating the range of demand-side, supply-side, storage, and other technologies and services available to meet the utility's service obligations." S.C. Code Ann. § 58-37-40(B)(1)(e). The evaluation of resource portfolios must include, among other things, "sensitivity" analyses related to fuel costs, environmental regulations, and other uncertainties or risks, and an evaluation of "low, medium, and high cases for the adoption of renewable energy and cogeneration, energy efficiency, and demand response measures . . . ." Id. This "fair evaluation" of a variety of resource options is the heart of the IRP.

Act 62 does not provide guidance as to several of these provisions. First, the statute is silent as to how the utility should determine the low, medium, or high cases. Conservation Groups suggest that the Commission require the utilities to develop these cases as part of the stakeholder process discussed above, and that it be required to do so at the outset of the IRP process. In addition, beyond prescribing a "fair" evaluation, Act 62 also does not define how demand-side, supply-side and other resources should be evaluated against each other. A "fair evaluation" requires a level playing field—that the utility give even-handed treatment when evaluating supply- and demand-side resources. This may not always require the use of identical methods; for example, efficiency may be modeled either as a selectable resource or an adjustment to the load forecast. However, the utility should not preliminarily limit demand-side options such as energy efficiency based on metrics that do not apply to supply-side resources, such as predetermined budgets or cost-effectiveness tests. If preliminary limits are placed on particular resources before the IRP is developed, the resulting plan will not reflect the optimal portfolio of resources. Likewise, the utility should not screen out renewable energy resources based

on inflated cost estimates, and instead should accurately account for both the costs and benefits of renewables. In either case, the utility should not impose constraints that artificially limit the resource. In addition, utilities should evaluate traditional and renewable supply-side resources using consistent methods.

Further, the "fair evaluation" required by the EFA cannot be conducted without the use of industry-standard capacity expansion and production cost models. Capacity expansion models evaluate different combinations of resources, under various future conditions (or "sensitivities"), to allow utilities to develop a set of candidate portfolios. Production cost models can then simulate operation of the resulting electric system under each of the candidate portfolios to determine what operating costs will be. These models allow utilities to optimize for a particular outcome; for example, to identify the least-cost investment and dispatch solution over the planning horizon. The Commission is required to evaluate IRPs based on a variety of factors, including "consumer affordability and least cost." S.C. Code Ann. § 58-37-40(C)(2)(b). The utility is not necessarily required to propose the least-cost portfolio as its preferred resource plan, as there are other factors to consider, but this provision does contemplate that the IRP at minimum identify what the least-cost plan would be. Without the use of capacity expansion and production cost modeling, this is not possible.

Lastly, Conservation Groups recommend that for all future resource adequacy studies, the Commission establish a process for stakeholder input. Specifically, the Commission should: (1) provide for stakeholders to review and provide input on proposed assumptions for future resource adequacy studies before those assumptions are finalized; (2) afford stakeholders an opportunity to request details of model inputs and

output, sensitivity analyses, and other model validation information before studies are finalized; and (3) provide for up-front stakeholder review and feedback of future resource adequacy studies.

C. Conclusion

In passing Act 62, the legislature expressed a clear intent that South Carolina utilities conduct long-term planning in a more comprehensive and transparent manner. But many of its provisions are subject to interpretation, and Conservation Groups believe that, in the name of efficiency, those issues should be clarified to the extent possible *before* utilities begin filing their IRPs. As such, Conservation Groups recommend that the Commission open a generic docket at this time to allow all parties the opportunity to fully engage the Commission on those common issues and for the Commission to offer further clarity and guidance on requirements and expectations. If the Commission believes a formal rulemaking is required at a later date, it may choose to do so. In any event, the Commission should request that Dominion Energy South Carolina delay its IRP filing pending the resolution of these outstanding procedural questions.

Whatever process the Commission ultimately decides to use, Conservation Groups recommend that the Commission adopt the following requirements for utility IRPs:

1) The Commission should require a transparent and meaningful stakeholder feedback process at key stages before and during utility IRP development;
2) The Commission should establish clear protocols for the quality of data utilities must use in their IRPs and require that utilities provide all data and modeling methodologies to stakeholders upfront; and

3) To ensure a "fair evaluation" of resources, the Commission should require that utilities use industry-standard capacity expansion and production cost models, that utilities do not place arbitrary or inaccurate limitations on renewable and demand-side resources, and that resource adequacy studies be developed with stakeholder input.

Again, we appreciate this opportunity to provide recommendations to the Commission on the IRP filing requirements of Act 62, and look forward to further opportunities to engage with the Commission and other parties on these important issues.

Respectfully submitted this 30th day of January, 2020.

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I certify that the following persons have been served with one (1) copy of Comments of South Carolina Coastal Conservation League, Southern Alliance for Clean Energy, and Upstate Forever by electronic mail and/or U.S. First Class Mail at the addresses set forth below:

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This the 30th day of January, 2020.

s/ Robin Dunn